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THE FRENCH BAR

II.

I have spoken of the Parlement of Blois which endeavored to impose upon the bar the obligation to give receipts for their fees, and a few words may not be out of place with reference to the constitution and attributes of the ancient court of which the *conseillers* at Blois formed a part.

The Parlement was originally a "*Curia Regis*"—a King's Court or a King's Council—and as such had no permanent situs, but followed the King throughout the kingdom wherever he went to administer justice, and to hear such appeals as were then allowed from inferior tribunals, which were little more than petitions to the King for ultimate redress. In the course of time the Court of Parlement was evolved, leaving the King's Council largely as an administrative court, treating only of affairs between the state and individuals or municipalities.

By an ordinance of 1581 a special and privileged bar was appointed for this administrative court on payment of a license fee and approval by the chancellor. This court still survives under the name of the Council of State, "*Conseil d'Etat*," and the privileged bar for that court still survives, the lawyers practicing before it, however, cumulating the functions of both solicitor and barrister.

It was not until the reign of Louis IX at the end of the thirteenth century that the Court of Parliament of Paris was so designated, and given a permanent location in the King's palace, with power to hear formal appeals, then allowed as of right. These powers were confirmed by Philip the Fair and appeals became so numerous that the calendars were encumbered, requiring an enlargement of the court and the appointment of men learned in the law, chosen for the first time from other classes than from the high nobility, which until then had been its only members; an enlargement followed later by the establishment of Provincial Parlements throughout the kingdom. This enlargement of its judicial powers involved its separation from the King's Council proper, which remained in charge of political and administrative matters, while the Parlement became essentially a Court of Justice, retaining, however, the jurisdiction to register royal edicts

and decrees; tradition at least willed it that this was essential to the promulgation of the decree, and the privilege was the occasion for conflicts between the King and the Court of Parlement. "To register" the logical French mind argued meant to examine, "to examine" meant to pass judgment upon in approval or disapproval, and hence the privilege of registration involved the privilege of rejection. These rejections—remonstrances, as they were called—gave rise to frequent conflicts. The Pope's Bull *Unigenitus* condemning certain Jansenist propositions was sent to the Parlement for registration in the last years of Louis XIV and registration was refused; even the personal opposition of the Great Monarch did not make the Chancellor D'Aguesseau retract, which is an indication of what stuff chancellors were then made. At an earlier date the Marillac Ordinance modifying the powers and attributes of the Parlement was denied registration; a declaration of *Lèse Majesté* against the persons who accompanied the Duke of Orleans when he left the kingdom,—the South Sea bubble schemes of law,—are other instances in which the Parlement exercised its right of remonstrance. These conflicts were at times resolved by arrest and imprisonment and exile of the magistrates; more frequently by the convocation of a Bed of Justice over which the King presided in person and had his way, overruling the Parlement's refusal; but nevertheless new conflicts continued to arise, and these repeated acts of resistance did contribute in some measure to check encroachment and to preserve the powers of the Parlement, until in 1756 the King held a Bed of Justice, to put an end to this questioning of his authority. It had been noted that then, as now, the younger members were the most disposed to be rebellious,—so the age of qualification for appointment of the Councillors was materially advanced. And a further rule was adopted that all edicts should be recorded at once upon receipt of the King's answer to the remonstrances.

These resistances to the registering of measures deemed obnoxious, continued with varying fortunes and intensity, during the existence of the Parlement—sometimes in the interests of the new liberties which were dawning over Europe, but as the dawn was overshadowed by the approaching storm the remonstrances were not infrequently favorable to the privileges of the old regime. These reactionary tendencies encountered obstacles even more formidable than absolute monarchies, and when the

Constituent Assembly met in 1789, the Parlement being then in recess, the Assembly cut the Gordian knot of the disputed prerogative by extending indefinitely the recess of Parlement, pending the proposed reorganization of the Judiciary. To this the various Parlements throughout the kingdom as well as that in Paris made dignified protest, and the recess chamber of the Paris Parlement which had remained in session, to its honor be it said, continued, in spite of its surely approaching dissolution, to hear and dispose of cases until the new laws on the reorganization of the Judiciary had been adopted by the Revolutionary Assembly.

It was not only in the case of the Ordinance of Blois that the bar came into conflict with this venerable tribunal and refused to practice until redress was had.

Similar unanimity was manifested on numerous other occasions. In 1730 the Bar of Rouen, being dissatisfied with a decree of the Parlement of Normandy suppressing a consultation of the bar on the subject of the liberties of the Gallican Church, had withdrawn from the court. After a time they were summoned by the president, who mildly inquired why it was that they had for some time ceased to appear in his court, as he was not aware that he had given them any cause. He urged them to speak with all frankness, as he had none but the best dispositions toward them, of which he would be glad at all times to give them proof. This conciliatory attitude met with courteous but none the less firm response; the leader of the bar replying that they deemed they had given no cause for the obnoxious decree, and had in consequence withdrawn from further appearance, but that the gentle terms in which they had just been addressed would bring them back to the bar with pleasure, and they prayed at the same time the decree complained of should be annulled. It was immediately so ordered by the court and a marginal note of the repeal having been made, the calendar of causes was called and arguments resumed. In 1753 when Omer Talon, presiding over the Parlement, was exiled by order of Mazarin for refusing to register some financial measure, the entire bar withdrew from the court house—this time it will be noted in support of, and not in opposition to the Parlement. On two other occasions, in 1771 and in 1778, when the Parlement was sent into exile, the bar again protested by withdrawing, and the new magistrates appointed to replace the exiled ones, made no attempt to discipline them. At another time the bar of Bordeaux protested against the action of

the Parlement in fixing a tariff of fees and withdrew until the tariff was laid aside.

On two occasions it was in defense of one of their individual members that the Bar so acted. The president of the Parlement in 1785 having used offensive language to one of the members of the bar, the whole body refused to appear before him until due apology was made; and in 1788 two lawyers having been sent into exile because of certain actions taken by them in regard to the Parlement, which had also been exiled, the entire bar resented the action by withdrawing.

Notwithstanding the seemingly antiquated forms and methods which these old time courts and advocates disclose, there was much of similarity with the judicial world of today; "one touch of nature makes the whole world kin" and the lawyers of today may find some kinship with the French Bar in their sufferings and safeguards against rude and inopportune interruption from the bench. You have heard the protest wrung from Dupin because the House of Peers did not give him the license which he required in defending Marshal Ney, and as far back as 1602 Loysel, a leader of the profession in his day, revived the memories of the lost companions of the bar in an interesting "Dialogue of Lawyers," in which one of the younger interlocutors asks his elders:

"Where shall we find today the honor and favor which you tell us was wont to be shown to the young lawyers by the presidents of Parlement, when they were listened to with gentleness, their errors excused, and encouragement given them to do better? Whereas, now it would seem we are made of other stuff than they and almost of no account, so that we are interrupted and brow-beaten on every occasion, asked questions totally irrelevant, and this not only with us younger men, who may sometimes have deserved it, but the same proceeding is suffered by the elders among us who have shown such a mastery of their cases, that when they are ended it is obvious that the questions and interruptions were totally beside the point, and that the lawyers had said nothing but what was pertinent to the case."

This matter of judicial interruptions is older than the French Court of Parlement it would seem, for I find Cicero warning his brother, Quintus, when appointed Prefect in Asia, to listen patiently, citing him the example of Cæsar Octavius who had great gentleness and willingness, and listened as long and as often as counsel desired to speak; and the younger Pliny praises Trajan

because he never used his power to cut short those who addressed him; while Ulpian enjoined on Pro-Consuls to listen with patience to the advocates:—and pleaders in those days were not brief, if we may believe Quintilian, who tells us there were advocates who gloried in speaking for a whole day in one case.

The French Bar, as we have seen, is pledged by official oath to always treat judicial authority with respect, and I believe that no bar is more zealous in maintaining that attitude toward the dispensers of justice, but the bar is justly jealous of the honor of the profession and zealous for the proper administration of justice which they hold is not enhanced by ignoring the patience and consideration which is due to litigants and to their advocates. De Thou, who was a formidable occupant of the presidency of the Parlement, occasionally lost patience and reproved counsel with some acerbity. On two such occasions the bar protested and got satisfaction. In the case of Dumoulin, who was a distinguished member of the bar and who had brought down upon himself the reproof of the president by stating a proposition with which the court disagreed, a protest was made by the Council of the Order. The president, who, after reflection had convinced himself that Dumoulin was right, received the remonstrance with great courtesy, and begged the committee to return the following morning and to bring Dumoulin with them, adding,

“I approve of your course, and you will not be dissatisfied.”

When Dumoulin appeared, the impatient but sensible judge said to him:

“Yesterday you advanced a proposition which I unwisely condemned. This was a fault,—in regard to yourself, and in regard to the bar whom I might have consulted on the subject. I beg the court of which I form a part, yourself and your confreres to forget it.” Such an “*amende honorable*” is a credit to both bench and bar.

Nor were the personalities nor even the jests of that time very different from those of our own. Loysel, whom I have mentioned as writing in 1602, talking of the well known lawyers of his time, refers to one Du Lac—not Lancelot, but Antoine—who was, he says,

“somewhat too boastful, believing that none who frequented the court house was such an adept as he on the Law of Substitutions,

at which weakness his brethren laughed; but, as a fact, he had more cases of substitution than any other."

He tells us also of one Jean du Boisle whose main recommendation was the volume of strident voice which reached from one end to the other of the Halls of Justice, pleading before the Chancellor Du Harlay, the wise chancellor who, when counsel were urging the flight of an accused as evidence of guilt, said to him, "Sir, if I were accused of carrying off the Towers of Notre Dame in my waistcoat pockets, I should begin by getting beyond the jurisdiction." Du Harley, who although a wise judge, had an irrepressible sense of fun, and could with difficulty let pass an opportunity to jest, when Du Boisle began an argument before him in his strongest tones, gently suggested to him to speak louder; at which, says the chronicler, the hall resounded with laughter. Some among my hearers will recall the stentorian tones of Mr. Samuel Hirsch. One day, arguing a motion before Judge Barnard, the judge suggested that he speak a little louder, and after a moment said, "Louder still," at which Mr. Hirsch replied, "Why I thought I was speaking loud enough for your Honor to hear me." "Oh, for me; but I thought you were speaking to somebody in Tammany Hall," so that not only history but the jest repeats itself.

When the constitutional amendment retiring judges at the age of seventy was under discussion, Mr. Evarts opposed it, and cited numerous instances where age had brought nothing but added experience to the incumbent, and greater usefulness; among others, the venerable Samuel Jones, who stayed on the bench until the age of eighty and then resumed the practice of the law. Upon somebody objecting that he had frequently seen the judge asleep, Mr. Evarts replied it might possibly be so, but that he was sure the judge knew more in his sleep than many another awake. As far back as 1557 the lawyers in France had a similar experience in the person of Gilles Bourdin, whom the lawyers complained of as sleeping on the bench, but who, the chronicler tells us, seemed to be asleep, and when the advocate, deceived by his quiet, stopped in his plea, merely remarked to him to proceed, and surprised him with the complete understanding of the argument as far as it had progressed.

We have seen the simple method by which the Constituent Assembly disposed of the ancient Parlement by prolonging its recess until it should have time to reorganize the judiciary. Its

proceeding with reference to the bar was quite as simple. As a privileged profession it was not unnatural that it should look askance at the continued influence of the Order of Barristers, and on the 2nd of September, 1790, a decree on the organization of the judiciary was enacted, the last section of which provides especially for the costume to be worn by judges, by the King's attorneys, the bailiffs, etc., and the concluding paragraph of the decree provides:

"As the men of law, hitherto known as *avocats* are not to constitute an Order or a Corporation, they shall not have any particular costume during the exercise of their functions."

So that, from that moment the Order of Barristers ceased to exist and the gentry "hitherto known as *avocats*" stepped into the background; litigants were permitted to have their cases presented by persons of their own selection, the bar as a body being temporarily, at least, under eclipse. Neither were lawyers recognized in the sanguinary Tribunal of the Revolution.

After disposing of the bar the Constituent Assembly proceeded to reorganize the judiciary, and what is now the Court of Cassation was then organized, the members of which were made elective for a term of four years; changes were effected by the decrees of 1795 and 1796, and the Constitution of 1800 made the judges appointive by the First Consul, the appointment being made by the presentation of three names to the Senate, which selected one.

There was a time, as far back as Columbus' discovery of America, when the bar had a voice in the selection of the judiciary. By Ordinance of 1493, Charles VIII prescribed that upon occasion of a vacancy, the solicitors and barristers should have the right to present the names of persons they considered the most suitable to fill the place, and the Court of Parlement must take the names so presented into consideration in selecting the three names which were to be transmitted to the King.

And there were times when the office sought the man. In 1588 Henry III appointed Francois de Montholon as Keeper of the Seals and Minister of Justice, a choice apparently so happy and so unusual as to draw from Séguier, the Solicitor General, an encomium which indicated the hope of a new era, for he declared the appointment equivalent to

"a public declaration that the King desired to enhance the office through its incumbent and not to elevate the incumbent through the office."

Happy times when the wholesome influence of the bar, and the eminent fitness of the incumbent were the potent forces in the selection of the judges.

It was not until the decree of 13th March, 1804, that the diploma of *licencié* was again made a requisite to the practice of the profession of the law, new provision being then made for a Roll of Advocates practicing before the courts, and it is a tribute to the profession that Napoleon should have so early recognized the need of a trained bar and put an end to the condition created by the Revolutionary Decree, which permitted anyone to assist in the trial or argument of causes. He had already realized that the remodeling of the laws of France, which had been begun many years before, could not be brought to a satisfactory termination without the aid of the profession against which he had such animosity. It is well to note here, that the 240 Local Customs which formed the great body of French law, had already undergone considerable compression, so that two or three of the principal customs, such as the Custom of Paris, embraced a large portion of French territory.

In 1810 another long step was taken by a decree which re-established the Order of Barristers, and although in its preamble great praise is given to the order and to its influence for good, yet Napoleon was careful not to restore the ancient liberties from which those influences flowed. He at first declared to Cambacérès that he would never sign the decree. To use his own words:

"The decree is absurd; it leaves us no hold for action against them. They are mutineers—fomenters of crime and of treason; as long as I wear a sword, I shall never sign such a decree. I wish to be at liberty to cut out the tongue of any lawyer who uses it against the government",

and he carried this hatred of the profession so far that he would not appoint a lawyer to the Legion of Honor. There was some logic in this, for the Legion had been created

"to reward those citizens who, by their learning, their talents, their virtues, have engendered respect for justice, and for the public administration",

among which he could scarcely class mutineers, fomenters of crime and of treason; and during the time of the empire no member of the order was appointed to the Legion of Honor, with the single exception of the learned and philanthropic Ferey, and his name was presented as "Member of the Council of Law Schools", for schools of law had been provided for by decrees of 1802 and 1804.

As a consequence, when Napoleon signed the decree re-establishing the Order of Barristers, he was careful to bring the nomination of their *bâtonnier* and their council under the supervision of his Minister of Justice and of his Solicitor General, and denied to the order the selection of its *bâtonnier*, leaving his selection to the council.

There was to be no meeting of all members of the order except for the purpose of the selection of the council, nor could the council itself come together or act without the assent of the Solicitor General; nor could any lawyer plead outside of the appellate department to which he belonged except upon authority of the Minister of Justice.

Mindful of the combined movement of the bar in protest against the action of the old Court of Parliament, Napoleon inserted in this decree of re-establishment a sort of precursor of the Sherman Act, which declared that if any members of any bar combined to refrain from the exercise of their profession under whatever pretext, they should be stricken from the rolls and never restored.

The bar had not been entirely dispersed by the decree of 1790. Although the order had ceased to exist, a number of the more intrepid had held together in a voluntary association and made it their duty to preserve the excellent traditions of the suspended order, admitting to their comradeship only men of recognized integrity and approved merit and courage. Even in those troublous times these high-minded men concerned themselves with recruiting an instructed bar, and the small band known as "*Avocats du Marais*" established a course of study which was kept up until the order was revived, so that in 1810, there was a strong nucleus which labored to recover their prestige and power. They never ceased to protest against the curtailment of their privileges contained in the decree of 1810 and their united action throughout all the ensuing years, as well as through the centuries that preceded, is perhaps the most eloquent lesson that they can give us.

The power of the French Bar, by reason of its high standard of professional and public responsibility, the ability of its membership, and above all, its solidarity in sentiment and in action cannot be better illustrated than by the fact that this purely voluntary association, with no other bond than a high and common purpose, has during successive centuries forced a recognition from the constituted authorities, through every regime, from Frankish Kings, through feudal monarchies, revolutionary interim, empires and republics.

It was only a riotous bondman of Kent who in England took as a rallying cry, "Let us hang all the lawyers," but in France both the magistracy, and the bar from which it was long recruited, had to stand proscription and exile from kingly authority that was absolute and irresistible, from the frenzy of triumphant anarchy, and it was no bondman, but the man who put Europe under his feet, who was at once the idol and the terror of his time, who showed his dread of the bar's indomitable spirit, when he declared that as long as he wore a sword, he would not give his sanction to the privileges which tradition had already consecrated, and which even he could not undo, except to use his own words, "by cutting the tongue from every lawyer who wagged it against him." Yet this outburst was perforce followed by the Napoleonic decree of 1810 restoring the order which the Constituent Assembly had aboished, recognizing its control and power of discipline over its own membership—though hindering it by rules which diminished that control, impeded the free election of its head, injected official action into its councils, and otherwise endeavored to make it subservient to governmental pressure. Against this diminution of its prerogatives, the bar unceasingly protested and upon the restoration obtained from the King glowing encomiums and a decree of reorganization, whose flattering preambles veiled the precautions taken to extend as little as possible the old privileges which the decree of 1810 had held in check; again the untiring protest was voiced, until in 1830, the King of France disappeared to give place to the King of the French, and some more of the shorn prerogatives were restored; and still the pressure was not relaxed until under the Second Republic in 1852 and the Second Empire in 1870 further recognition of their claims was obtained.

But in the long process of encroachment and resistance, some of the spirit of submission and veneration had been fretted away,

the absolute right of refusal to admit a postulant had been, largely by legislation, but more by jurisprudence, questioned and made subject to appeal; the right of warning and of censure remained final, but suspension and expulsion were by law made subject to judicial revision, and doubts have been raised whether bringing suit to enforce collection of a fee,—being allowed by the law of the land,—can be made ground for expulsion; nevertheless the offender in this regard cannot be saved from the aloofness which is the moral equivalent of complete severance.

Even while Napoleon's decree, prohibiting joint action on the part of the bar to withdraw from the practice of their profession, as a protest against injustice, remained on the statute books, it could not be enforced. In 1815, during the Hundred Days, the Bar of Bordeaux took such action, and no enforcement of the prohibition was attempted. Again, the Bar of Mesle in the Department of Poitiers having suffered from the presiding judge most unmerited reproofs, could find no other means of relief than to refuse to appear before the court. They were prosecuted and condemned, under the decree of 1810, but the Appellate Court at Poitiers reversed the judgment, holding that under the circumstances disclosed, their action was beyond reproach and the complaint against them was dismissed.

A word more with reference to the judiciary since the Revolution. I have mentioned that the Constituent Assembly made an experiment of the election of judges, but that the experiment only endured until the consulate, having proved a lamentable failure, if we may credit the assertions of Deputy Roche made in the Chambers in January, 1883. Judges are now appointed by the head of the nation. This is done by a decree countersigned, and usually on the recommendation of the Minister of Justice. Judges must be French citizens, *licenciés* in law, must have been for not less than two years, advocates on probation. Any person may be appointed who fulfils these requirements, whether he is already a magistrate or not. For instance, advocates have been appointed directly to the Court of Cassation. Criticism has occasionally been made upon this method of appointment, depending solely upon the Minister of Justice, as his is largely a political office, and it is claimed that his appointments, not unnaturally, are apt to be guided by political considerations.

In actual practice, judicial positions have become mainly hierarchical, although not necessarily so under the law. An appointment is usually first made of a substitute judge, there being a provision for not less than 150 substitute judges when their services are required. Until recently, these young substitutes have served without salary, and even at present a substitute is only accorded a salary in exceptional cases, and then only 1500 francs per year.

Promotions are provided for by a cautious system; the presiding justice of the Appellate Court and the Solicitor General for each Appellate Department prepare a list of the magistrates—sitting or standing—which means judges or state attorneys, whom they consider worthy of advancement. These lists are submitted to a Commission consisting of the President of the Court of Cassation, the Solicitor General, the senior and junior justices of the court under the presidency of the Minister of Justice, or in his absence, of the President of the Court. From the lists submitted, this committee makes a selection in order of merit of the appointees for any vacancy that may occur during the year. This, again, has been the subject of criticism by no less an authority than Esmein in his *Elements of Constitutional Law*. The separation of the executive and judicial powers is not as clear cut as it should be, he remarks, owing to the fact that the appointments of the judiciary are made by the executive; not only the appointment of judges but their advancement lies in his hands, and this condition of subserviency is not sufficiently counterbalanced by life tenures. Another view which in the present evil days might find an echo among us, is cited from Carré, who tells us that although the judicial power is forbidden to encroach on the legislative, the theory had been singularly attenuated in practice by the ever-growing authority attributed to jurisprudence.

In France all the state attorneys as well as the judges are classed as magistrates—the judges are distinguished as “sitting magistrates”, while the state attorneys are known as “standing magistrates”; and from them the bench is largely recruited. The Solicitor General (*Procureur Général*) is the head of all the standing magistrates, and he is assisted by a number of attorneys general, and by a *procureur* in each judicial department and by substitute attorneys general. The whole body is known as “*Ministère Public*”, perhaps best rendered by the “public service”. Apart from the investigation and prosecution of violations of the

criminal law, the duty of which they share with municipal officers and police officials, ministerial officers are charged with public duties in civil controversies. In all matters that concern the policy of the state, the functions of any branch of government, all internal order or administrative requirements; the status of individuals, guardianships, the rights of minors, exceptions to jurisdiction, etc., etc., the prosecuting officer is to be informed fully of the proceedings and he is called upon to take part in the argument after all the parties in interest have been heard, and to lay before the court his conclusions as to the rights of the respective parties.

The status of an individual is a matter which concerns the community, or the state; his rights, his duties, the manner of dealing with him, his relation to the authorities, the legal disposition of his person and of his property are matters of public or governmental concern and are not confined to the individual; so it is with the jurisdiction of a court when called in question, and upon such matters, it is right that the public authorities should be heard.

For instance, in a question as to what law shall apply to the execution and to the dispositions of a will, the "*Avocat Général*", standing unbiased, as between the parties, studies the question from a purely legal point of view, and gives the court the benefit of his examination, so that no question of general or public concern is left to the dangerously partial and often inadequate presentation of those individually interested.

It is of some significance that the members of the *Ministère Public*, also called the "*parquet*" or floor, from the fact that they occupy the floor, or a certain portion of it reserved to them in each court room, are known as magistrates; the title suggests that the prosecuting officer should be invested with some of the judicial temperament not always to be found among those under our jurisdiction.

In these days of alternate retrenchment and expansion in public expenditure, it may be of interest to know that the court of last resort in France, the Court of Cassation, is made up of a President at a salary of 30,000 francs, three Sectional or Chamber Presidents at 25,000 francs, and forty-five Councilors or Judges at 18,000 francs, and that the court is attended by a Solicitor General at 25,000 francs and six Attorneys General at 18,000 francs.

Under the laws of 1796 the legislature fixed the salaries of the judges at the same figure as that of their own members, evidently not desiring to put their appointees upon a higher level than themselves, and the salaries were then adjusted in myriagrams of wheat, not payable in kind, but used simply as a measure of value; this might be commended to the study of the bimetalists and monometalists. The President of the Appellate Court of Paris (*Cour d'Apel*) receives a salary of 25,000 francs, and the Councillors or Judges receive 11,000 francs, while the Sectional Presidents have a little increase, 13,750 francs. The Solicitor General of that court receives 25,000 francs, seven Attorneys General 13,200 francs, and eleven substitutes, 11,000 francs each.

The lawyers practicing before the Court of Cassation, as well as before the *Conseil d'Etat* (Administrative Court) are limited in number to 60, and they act both as solicitors and barristers. Originally, as we have seen, the Council of State was an outgrowth or offshoot of the old King's Council, which was divided into the Council of State for administrative matters, and the Parlement for judicial affairs. The old King's Council was attended only by special advocates directly appointed by the King; this method continued after the separation by which the Council of State became purely an administrative court. In 1817 the bar of the *Conseil d'Etat* and that of the Court of Cassation were united into one bar and their number limited to 60, and in that way the appointment of counsel to that bar including the right to practice before both of those courts, became an appointive office and remains in reality what is known as a saleable or transferable office.

Article 91 of the law of the 20th of April, 1816, provides that advocates at the Court of Cassation may present for the acceptance of His Majesty the names of their proposed successors, provided these had the qualifications required by law. This privilege of presenting proposed successors, the law proceeds, does not in any way infringe upon the right of His Majesty to reduce the number of such functionaries, and evidently the acceptance of the successor is entirely in the discretion of the appointing power.

Purchaseable offices had been abolished under the Revolution by the decrees of August 1789 and October and December, 1790, but it appears that notwithstanding this abolition offices were transferred, and the government tolerated such transfers until

finally the custom was legalized by the law that we have just mentioned. It had been questioned whether this privilege of suggesting their successors for appointment constitutes a real property right, and much litigation had ensued, which it would require the editor of a Century Digest to present to you; in fact, immediately after passage of the law in 1816, as early as the following year, complaints had been made that offices had been sold at exorbitant prices to incompetent young men, who found themselves unable to make a living out of the office without resorting to excessive charges, so that in the words of the *Procureur Général*, a shameful cupidity is taking the place of the disinterestedness and moderation which should distinguish those officials. Among the officials indicated were notaries, *avoués*, court clerks, bailiffs, etc., and the *Procureur* issued his interpretation of the decree to the effect that while the law gave the privilege of suggesting a successor, that privilege was to be subordinated to the necessities of public order, and that it would be well to supervise the transfers, and to warn candidates that the right of removal without cause was unreserved.

Nevertheless the privilege of presentation has continued to be considered as a property right, and a law of 1856 subjected the transfer of a tax of ten per cent on the amount of the bond required by the new appointee, while the earlier law had imposed a tax of two per cent on the purchase price.

In these days of strenuous and not always legal methods of extending the suffrage it is interesting to note the progress of feminine lawyers. I find in an old volume, which I presume reliable, that long before the Theodosian Code (in the fourteenth century) women were accepted as lawyers in Rome, and that two of these, Amasia and Hortensia, acquitted themselves with great credit, while a third, Afrasia, was usually herself the litigant and so scandalized the judges by her loquacity, her effrontery and her outbursts of passion, that she was forbidden to speak in public, a prohibition later extended to all women, and only modified by Theodosius to the extent of permitting them to speak in their own defense. Whether Afrasia is an argument against the new proposition or whether Amasia and Hortensia are a preponderating argument in its favor, I leave to your own judgment. But in France the application of women for admission to the bar did not at first meet with success, although in 1897, in denying the application of Mlle. Chauvin, the court was moved to admit that she

was "a very gifted and learned lady". It was perhaps this recognition that learning and high gifts were being excluded from the bar which prompted the legislature to pass a law in 1900 allowing the admission of women to the bar.

We may learn from the history of the French Bar not only the meaning of the term "*Esprit de Corps*", which we have borrowed without translation from their language, but the value of the thing which it signifies. I have found throughout the long story of its labors no instance of any internal dissension which ever prevented it from making common cause and presenting a united front against any attempt to diminish its independence, shake its authority, or lessen its power to hold the members of the order to strict accountability for the observance of the highest principles of conduct.

We do not need to learn, but we may admire the ready unselfishness which always brought forward great defenders for unpopular, and not infrequently perilous, causes.

Little is known today of the French *Dred Scott Case*, the case of a West Indian slave brought to France in 1770 by his master, and championed by a young lawyer of twenty-eight, Henrion de Pancey, in a judicial proceeding to procure his freedom. More fortunate than the counsel for Dred Scott, his gratuitous task was successful, and the slave was declared a freeman. This decision under the old regime anticipated by more than twenty years the decree of the Constituent Assembly that "Every man is free as soon as he comes into France."

More is known, but not enough, of the lawyers who volunteered to defend the foredoomed Louis XVI. Malesherbes, who had been a councillor in the Court of Parlement, and later minister under Louis XVI, after vainly endeavoring to abolish the "*Lettres de Cachet*" and to curb the prodigality of Louis' courtiers, had resigned and left the country at the outbreak of the Revolution. In July, 1792, "affairs are becoming grave," he wrote, "and I must return to my post, for the King may have need of me." In December of the same year, he solicited and obtained leave to aid the King in his defense,; one of the younger barristers, De Seze, volunteered to assist him, and they stayed by the King, prodigal in their efforts to save him, until the end.

Eleven months later Malesherbes was arrested as a "suspect", and condemned by the revolutionary tribunal to follow his mas-

ter. His reward consists in a statue which his brethren of the bar have placed in the library of the order in the Palace of Justice, and the perpetuation of his name in one of the handsome boulevards of the American's Paradise on the Seine.

Berryer, whose father had given him the example of devotion to his profession by defending those proscribed by the Terror and who, strong Royalist as he was, assisted Dupin in the defense of Marshal Ney, and secured the acquittal of Cambronne, venting his youthful indignation—he was only twenty-six—against his own party, for bringing to trial the fearless soldier who knew no other call than duty.

To name them, unless I made invidious exclusions, would be to repeat Homer's catalogue of ships, while to describe their characteristics would require a volume.

It was a brilliant and talented Englishwoman who wrote some sixty years ago: "We English have a scornful, insular way of calling the French light", and it is an English tribute with which I will close; Mr. Underdown, Benchet of the Inner Temple, after nearly fifty years of relations with the French Bar, concludes an address at the Inner Temple Hall with these words:

"To sum up, the chief points of interest are the laborious training and strict discipline of the advocate over six years, followed by a distinct career, regulated most strictly.

"I can hardly conclude without placing upon record my cordial appreciation, formed after many years of observation and experience, of the high qualities of the French advocate, his eloquence, dignity and honour, his respect for discipline and etiquette, and his independence and courage in the exercise of his duties. The general body of the profession, if not possessing great wealth, manifests the greatest sympathy for the more necessitous brethren.

"An external testimony to the characteristics and conduct of the Order is found in the fact that from its ranks have risen the majority of the great political, diplomatic and administrative officers of the state in the past. This is now and will certainly continue to be the case in the future."

It is no more than truth to say that the bar today is still heedful of the warning of more than two centuries ago, addressed by D'Aguesseau to the probationers of his day:

"You walk upon a high plane, with precipices all about you; the path you follow is strewn with the wreckage of illustrious predecessors, cast down from their high estate by sordid interests or the unbridled love of their own supremacy."

They still recall and in their conduct verify the same chancellor's statement of their calling:

"You stand for the public weal—midway between the tumult of human passions and the throne of justice, to the foot of which you bring the hopes and prayers of the people; it is through your agency that its decisions and decrees are brought about; you are equally responsible to the litigants and to the courts; this dual responsibility is the measure of your duty."

Paul Fuller.

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